



PUBLIC EMPLOYMENT RELATIONS COMMISSION

Street: 112 Henry Street NE, Suite 300, Olympia, WA 98506

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Phone: (360) 570-7300 Fax: (360) 570-7334 E-mail: filing@perc.wa.gov

PETITION FOR INVESTIGATION OF
QUESTION CONCERNING REPRESENTATION☐ Amended Petition in Case _____Instructions: www.perc.wa.gov/Forms/E-1-Inst.pdf Applicable Rules: Chapters 10-08, 391-08 and 391-25 WAC.RECEIVED
OLYMPIA, WA
2009 APR 30 AM 7:59
PUBLIC EMPLOYMENT
RELATIONS COMMISSION

1. PARTIES The petitioner claims that a question concerning representation exists involving certain employees of the employer named below.

EMPLOYER City of Des Moines
 CONTACT PERSON TONY PIASECKI
 ADDRESS 21636 11th AVE South
 CITY, STATE, ZIP Des Moines, WA 98198
 TELEPHONE 206-870-6550 ext. _____
 FAX 206-870-6540
 E-MAIL TPiasecki@DesMoinesWA.GOV

ATTORNEY OR
REPRESENTATIVE _____
 ADDRESS _____
 CITY, STATE, ZIP _____
 TELEPHONE _____ ext. _____
 FAX _____
 E-MAIL _____

PETITIONER Des Moines Police Management Assoc.
 CONTACT PERSON Kevin Tucker
 ADDRESS 21900 11th AVE South
 CITY, STATE, ZIP Des Moines, WA 98198
 TELEPHONE 206-870-7602 ext. _____
 FAX 206-870-7626
 E-MAIL KTucker@DesMoinesWA.GOV

ATTORNEY OR
REPRESENTATIVE _____
 ADDRESS _____
 CITY, STATE, ZIP _____
 TELEPHONE _____ ext. _____
 FAX _____
 E-MAIL _____

INCUMBENT BARGAINING REPRESENTATIVE Indicate one.

☒ The parties are not currently represented for bargaining; OR☐ The employees involved are currently represented by the organization below:

ORGANIZATION _____
 CONTACT PERSON _____
 ADDRESS _____
 CITY, STATE, ZIP _____
 TELEPHONE _____ ext. _____
 FAX _____
 E-MAIL _____

ATTORNEY OR
REPRESENTATIVE _____
 ADDRESS _____
 CITY, STATE, ZIP _____
 TELEPHONE _____ ext. _____
 FAX _____
 E-MAIL _____

2. DESIGNATION OF REQUEST Indicate one.

☒ RECOGNITION REQUEST The petitioner requests certification as exclusive representative of the bargaining unit.☐ CHANGE OF REPRESENTATIVE The employees in the bargaining unit desire to designate the petitioner as their exclusive bargaining representative.☐ DECERTIFICATION The employees in the bargaining unit no longer wish to be represented by any employee organization.☐ EMPLOYER PETITION - DEMAND FOR RECOGNITION The employer has been presented with one or more demands for recognition (per attached documentation) and requests a determination by the Commission.☐ EMPLOYER PETITION - INCUMBENCY QUESTIONED The employer has a good faith belief (per attached documentation) that a majority of employees no longer desire to representation by the incumbent bargaining representative.

4. OTHER RELEVANT FACTS Indicate one.

☐ Additional information is set forth on separate sheets of paper attached to this petition.

5. SHOWING OF INTEREST

A petition filed by an organization or employees must be accompanied by a showing of interest indicating that the petitioner has the support of 30% or more of the employees in the bargaining unit.

3. BARGAINING UNIT

EMPLOYER'S PRINCIPAL BUSINESS: City DEPARTMENT OR DIVISION INVOLVED: Police

COLLECTIVE BARGAINING AGREEMENT Indicate one.

☒ The parties have never had a contract; OR☐ A copy of the parties' current (or most recent) collective bargaining agreement is attached.

DESCRIPTION Indicate inclusions, exclusions, contract page or case/decision number.

Des Moines Police middle management employees, currently consisting of 2 Police Commanders

NUMBER OF
EMPLOYEES
IN UNIT 2

6. AUTHORIZED SIGNATURE FOR PETITIONER

PRINT NAME Kevin R. Tucker TITLE COMMANDER
SIGNATURE [Signature] DATE 4-30-09

THOMPSON
OLYMPIA, WA

2009 APR 30 AM 7:59

PUBLIC EMPLOYMENT
RELATIONS COMMISSION

April 30, 2009

Public Employees Relations Commission
112 Henry Street NE. Suite 300
Olympia, WA 98506

To whom it may concern,

My name is Kevin Tucker and I am a Division Commander (one of two) with the City of Des Moines Police Department. The Division Commander roles within the Des Moines Police Department are middle management positions who report directly to the Chief of Police. The Commander assignments/promotions are classified as Exempt by the City under FLSA guidelines. Within the Police Department all commissioned officers below the rank of Commander are covered by the Des Moines Police Guild Bargaining Agreement. The middle management positions within the Police Department are not covered under any bargaining agreement which will afford us as uniformed, commissioned officers binding arbitration.

The civilian employees of the Police Department are covered under a Memorandum of Understanding which created the City of Des Moines Employee Negotiation and Advisory Committee on March 26, 1997. This MOU (copy attached) in Section 2. Describes the committee make up and explicitly exempts management, exempt employees such as the Commanders from participation.

Commander John O'Leary and I have chosen to request to become a Recognized Bargaining Body by PERC and the City of Des Moines. We have created an organization called the "Des Moines Police Management Association". We have initiated the process of Articles of Incorporation with the State of Washington Secretary of State to be a Nonprofit Association. We have also created a set of bylaws called the "By Laws of the Des Moines Police Management Association" (original signed copy attached).

We, both Commander O'Leary and I wish to be recognized by the Public Employment Relations Commission and to receive the protection and benefit this recognition affords.



Kevin R. Tucker
Commander
Des Moines Police Department

4-29-09
(Date)

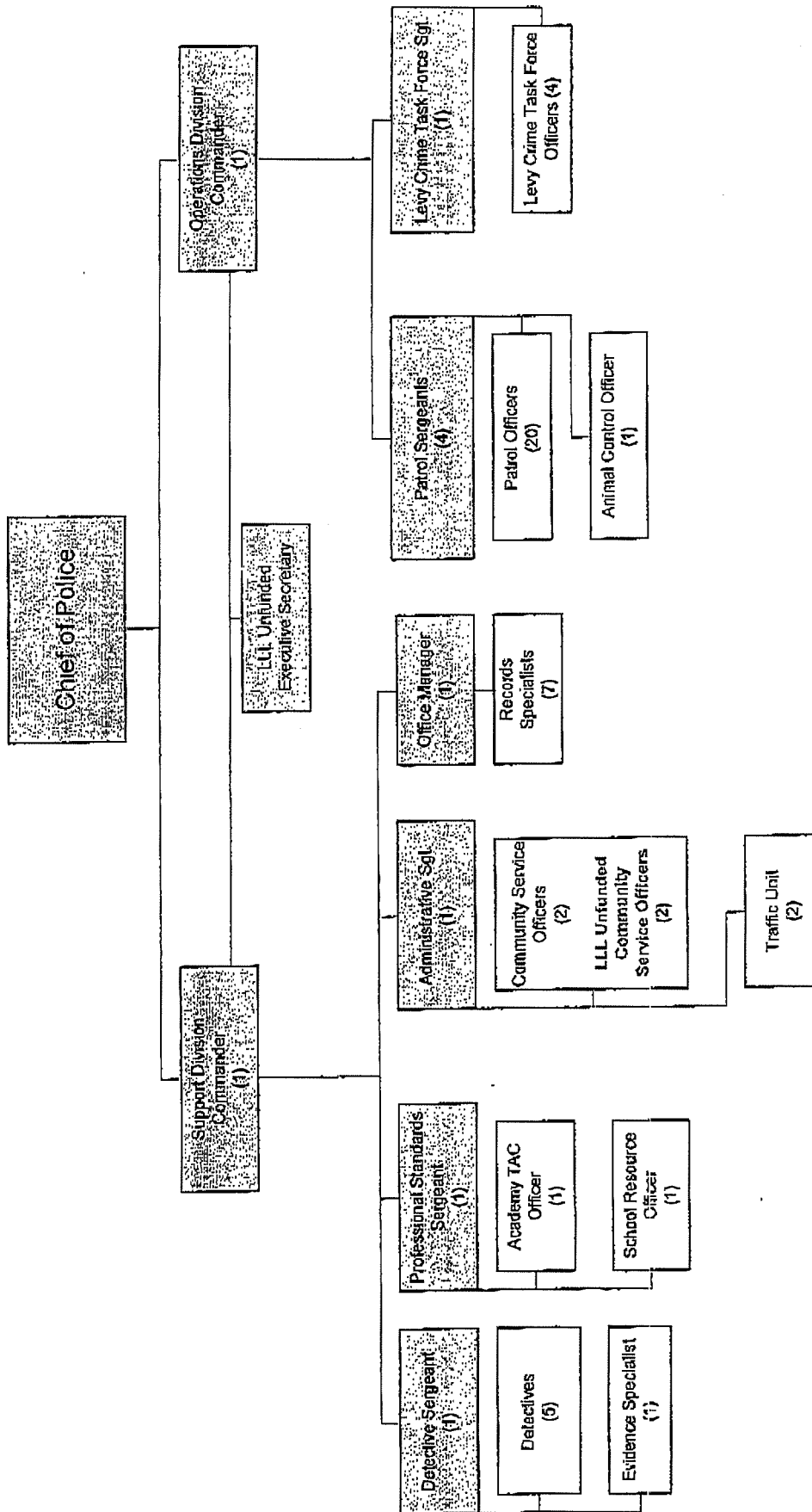


John E. O'Leary
Commander
Des Moines Police Department

4-29-09
(Date)

Des Moines Police Department Organizational Chart Actual 2009 Budget

December 17, 2008



By Laws**Of The****DES MOINES POLICE MANAGEMENT ASSOCIATION****Article I****Name**

Section 1. Name: The corporate name of this organization is the *Des Moines Police Management Association* (referred to throughout these by-laws as the Association).

Section 2. Permanency: The Association shall not have the power to dissolve while there are two (2) members in good standing.

Section 3. Offices: The principal office of the Association shall be in the City of Des Moines, King County, State of Washington.

Article II

Objectives

The objectives of this Association shall be to improve for management members of the Des Moines Police Department, wages, hours, working conditions and other economic advantages through organization, negotiations and collective bargaining through all lawful methods and to promote civil service legislation and career service in the city government and assist in the recruitment to the Des Moines Police Department of dedicated individuals interested in embarking upon or continuing public service careers; to promote and establish broad and comprehensive disability and retirement plans for management members of the Des Moines Police Department, which will assure just standards of living; to do all those things necessary to insure the immediate family of all members shall not be in want; to extend and uphold the principles and merit and fitness in service to the Des Moines Police Department; to bring into closer relationship local organizations of all kinds as well as all the citizens of the City of Des Moines so we may contribute to the welfare, prosperity and improvement of our community, state and country; to cooperate with all organizations having similar goals; to seek to promote the dignity of the profession and to generally do and perform any and all acts and things which may be found necessary or convenient for carrying out the objectives herein.

Article III

Membership, Dues and Assessments

All officers who are employed by the City of Des Moines and who are commissioned with the rank of commander and below the rank of Police Chief and all persons in transit from active to retired status as provided in Section 9, are eligible for Association membership.

Section 1. Application for Membership: Application for Association membership shall be made by filling out the proper Association dues deduction form for full time employees.

Section 2. Approval of Membership Application: Membership applications received shall be presented to the Secretary. The Executive Board is duly authorized to accept, defer or reject any application.

Section 3. Dues: The monthly dues of members of the Association shall be determined by a majority vote at a regular membership meeting.

Section 4. When Payable: Membership dues shall be payable monthly by means of payroll deduction for all members..

Section 5. Reinstatement: A suspended member may be reinstated to membership in the Association upon payment of all dues in arrears and payment of a reinstatement fee of twenty-five (25) dollars plus the current month's dues.

Section 6. Public Statements: No member shall make any public statement on behalf of the Association on any issue without the consent of the Executive Board. An Executive Board member shall be appointed as the spokesperson for the Association, this appointment shall be made by the members of the Executive Board. Members who wish to propose petitions in regard to Association or contractual matters shall not circulate such petitions until the contents of the petitions shall be presented to a special or regular meeting of the Executive Board. The foregoing shall in no way prevent the circulation of the petition after said meeting.

Section 7. Endorsing Political Candidates: The Executive Board, shall consider all requests for endorsements by the Association. Majority vote of the Executive Board at a regular or special meeting is required for endorsement of a political candidate. No person or group within the Association shall use a Association title of office and/or Association stationery to endorse any political candidate without first obtaining consent from the membership by a vote.

Section 8. Special Assessments: Any special assessment levied upon the Association members shall be used solely for the promotion of the welfare of the Association. No vote shall be taken on any special assessment unless it shall have been presented at a meeting of the Association prior to the time such assessment is to be voted upon and until all members of the Association in good standing have been notified of the assessment and its purpose in writing by the Secretary. No special assessment shall be levied except by a majority vote of those members voting and shall not exceed one in number in any fiscal year.

Section 9. Members in Transit: A member who is in transit from regular, active duty status to either a disability or service retirement shall, for a period of thirty (30) days after termination, retain all such rights and privileges of a member in good standing. Any member who has terminated employment with the City of Des Moines may apply for Association assistance in any legal matters which may arise due to that members employment with the City of Des Moines Police Department.

Article IV

Officers and their Duties

Section 1. Designation of Officers: The officers of the Association shall be a President, and Secretary/Treasurer.

Section 2. Duties of the President: The President shall preside at all meetings of the Association and the Executive Board. The President is a member ex officio of all committees and may sign all checks drawn against the funds of the Association.

Section 3 Duties of the Secretary/Treasurer: As Secretary, this officer shall keep a record of the proceedings of all meetings of the Association Executive Board and of all meetings of the Association membership, both regularly scheduled and special meetings; draw authorized orders on the treasury and perform such other duties as may be required by the officers of the Association. As Treasurer, this officer shall receive and take charge of all money, property and securities of the Association delivered to him/her. This officer shall deposit all money so received to the credit of the Association and in the name of the Association in a financial institution approved by the Executive Board. All disbursements shall be made by check. Any checks issued by the Association shall immediately be brought to the attention of the Treasurer. The checks issued by the Association may only be signed by the President. The Treasurer shall prepare and submit a quarterly membership and financial report as well as an accurate record of receipts and disbursements to the Association membership at each regular meeting and at the meeting shall render a quarterly operating statement of the financial transactions of the Association for the previous quarter.

Section 4. Duties of the Executive Board: The Executive Board shall be the governing body of the Association, when the Association itself is not in session. All matters affecting the policies, aims and means of accomplishing the purposes of the Des Moines Police Association, as specifically provided for in its by-laws or by action of the Association at a regular or special meeting, shall be decided by the Executive Board, which shall meet at the call of the President or such times as seems expedient to a majority of the members of the board. A report on all action taken by the Board shall be made to the membership at the next following meeting. A majority of the members of the Executive Board shall constitute a quorum.

Article V
Eligibility for Office, Term of Office, Nominations,
Elections, Installation and Removal of Officers

Section 1. Eligibility for Office: Any member in good standing shall be eligible to hold office

Section 2. Term of Office: The term of office for the President, and Secretary/Treasurer shall not be be limited to any number of consecutive terms. Said regular terms of office shall commence on the last Monday of February. Terms of office shall consist of 2 years in duration.

Article VI

Meetings

Section 1. Meetings: Regular meetings of the Association will be held once every two (2) months and shall be scheduled by the President.

Section 2. Special Meetings: Special meetings may be held at the call of the President or at the call of the Executive Board. A majority of all members of the Association may at any time require a special meeting by filing a request with the President or the Executive Board. In the event such a petition is filed with the President or Executive Board, the President or Executive Board will schedule a special meeting no earlier than five (5) days after the filing of such petition. The petition so filed shall constitute a call to the members.

Section 3. Robert's Rules of Order: Robert's Rules of Order, revised, shall be the guide in all cases to which they are applicable and in which they are not inconsistent with the by-laws of the Association.

Article VII

Committees

Section 1. Committees: The President shall appoint standing and special committees of the Association with the approval of the Executive Board.

Section 2. Grievance Committee: The Grievance Committee shall consist of a majority of the Executive Board.

Section 3. Bargaining Committee: The Bargaining Committee shall be appointed by the President and shall consist of the President and Secretary/Treasurer. The committee members shall be responsible for the gathering and formal presentation of all supportive or resource material deemed necessary for the productive pursuit of negotiations.

Section 4. Appeals Committee: The Appeals Committee will be composed of the Executive Board.

Article VIII

Expenses

Section 1. Authorization: Except as hereinafter provided all monies expended by the Association must be authorized and approved by a majority vote.

Section 2. Normal Expenditures: All requests for monies shall be referred to the Executive Board, which shall conduct a study of the facts surrounding the request. The Executive Board will vote on the request and if approved, the expenditure will then be authorized.

Section 3. Regular Expenses: Any expenses which are likely to recur are classified as regular expenses. The Executive Board at any meeting may authorize the specific regular expenses.

Section 4. Budget: The Executive Board maintain a detailed budget for the Association. The budget period for the Association will be January 1 to December 30. The budget will be itemized into categories. The categories list will be maintained by the Secretary. The Association budget will not be exceeded, except as provided in Article VIII, Section 6 of the by-laws.

Section 5. Emergency Expense: In the case of an emergency expense, it must first be determined by the Executive Board to be an emergency. If it is so determined, the Executive Board with a majority vote may expend the necessary money.

Section 6. Administration: It shall be the responsibility of the Treasurer to advise the Executive Board, upon request, the balance in the budget in any of the budgeted categories. It is intended that this budget should not restrict the ability of the Association to adequately serve, protect and represent its members. It is intended that it should provide them with sound financial planning and a meaningful member participation in the administration of the Association.

Article IX

Association Attorney

Section 1. Law Firm: A law firm may be selected by the Executive Board, which may act as General Counsel to advise the Association and its officers and to attend meetings of the Association, Executive Board or committees which the President or Executive Board deem appropriate.

Section 2. Use of Association Attorney: In the sole and exclusive discretion of the Executive Board, a Association attorney may assist any member on any legal matter not pertaining to that member's private affairs.

- a. It is anticipated there may be requests by members for authority to use the services of a Association attorney which will be denied, even though in the past the Association may have given permission in similar cases.
- b. In considering whether to authorize use of a Association attorney, the Executive Board may take into consideration the financial condition of the Association, the nature of the matter involved, the past policy of the Association, the circumstances giving the rise to the need for legal services and all other matters they deem important.
- c. In considering the application of the member for legal assistance, the Executive Board may discuss the matter in the absence of the applicant and take a secret ballot on the application. No member of the Executive Board is required to give a reason for his/her vote and the reasons if given shall not appear in the minutes.
- d. No member will retain the services of an attorney without first obtaining authority from the Executive Board (or other officers as hereinafter provided) unless such member does so at his/her own expense. The Executive Board will not approve applications for payment of legal fees to any attorney other than a Association attorney.
- e. If there is a conflict of interest between two Association members and one member has already received approval to use a Association attorney, the member whose interest conflicts with the member using a Association attorney should notify the Executive Board in writing of the conflict. If it is determined by the Executive Board that a conflict exists, the Executive Board may revoke the Association member's authority to use a Association attorney at Association expense and any member interested in the matter will be responsible for his/her own attorney fees from that time on.

- f. Any Association member, who in the course of exercising his/her duties for the City of Des Moines is involved in an incident relating to the use of deadly force or the discharge of a weapon at a citizen and who is placed in legal jeopardy or becomes subject to disciplinary action as a result of that weapon discharge or the use of deadly force is guaranteed, the full and complete services of a Association attorney, if available, or an attorney of his/her own choosing for a period of up to eight (8) hours commencing from the time official statements are required as related to the discharge of said weapon or the use of said deadly force. No payment of attorney fees in excess of eight (8) hours will be allowed unless there is advanced approval, in writing by the Executive Board. Attorney fees shall not exceed the standard hourly rate prevalent at the time the incident occurs. In any dispute over fees arising out of the use of any attorney under the circumstances stated above, the final rate shall be a maximum of ten (10) dollars per hour over the current average hourly rate charged the Association by the Association attorneys.

Article XI

Amendment to the By-Laws

Amendments to the by-laws originating within the membership may be proposed at any Association meeting by any Association member and if the motion is seconded, a vote of the membership present shall be taken.

Amendments to the by-laws originating within the Executive Board may be proposed at any meeting of the Executive Board by any member thereof. If a majority of the Executive Board votes in favor of the proposed amendment, it shall be drawn up in writing and cleared through the Association attorney for a legal opinion, if necessary.

Any proposed amendment to the by-laws passed at a regular meeting pursuant to Article XI, paragraph one shall be reviewed by the Executive Board for clarity and if necessary, cleared through the Association attorney for a legal opinion.


The language of the proposed amendment may be altered with the consent of the maker, but not to the extent of changing the original intent.

The amendment shall then be presented again at the next regular Association meeting for a final vote. If the proposed amendment is approved by a majority of members present at the second meeting, it shall be adopted. The amendment shall then be published in its final form in the President's next message to the membership.

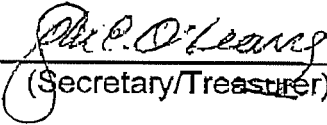
Article XII
Computation of Days

Computation for the days of an event begin the day after the occurrence of the event.

These by-laws will become effective on the 29 day of April, 2009.


(President)

Kevin R. Tucker
(Printed Name)


(Secretary/Treasurer)

John E. O'Leary
(Printed Name)

Dated: 4-29-09

**MEMORANDUM OF UNDERSTANDING
CREATING
CITY OF DES MOINES EMPLOYEE NEGOTIATION
AND ADVISORY COMMITTEE**

Section 1. Purpose

The purpose of the City of Des Moines Employee Negotiation and Advisory Committee is to facilitate meaningful communications between employees and city management on significant matters related to wages, hours, and working conditions; improve the morale of all city employees; and promote efficiency in the provision of services to the citizens of Des Moines. Creation of this committee does not modify or replace any management authority as established in City ordinances and the City's Personnel Manual.

Section 2. Committee Make-up

Employees represented by and eligible to vote for and be members of the Committee shall be non-management, non-confidential employees not in the Police Guild. Employees defined as exempt in Section 4.M. of the City of Des Moines Personnel Manual, the Executive Secretary assigned to the City Manager's Office, the Deputy City Clerk/Personnel Analyst and employees who are members of the Des Moines Police Guild are not represented by and are not eligible to vote for or be members of the Committee. Departments shall have the following number of committee members:

- Public Works - two members
- Park and Recreation - two members
- Marina - one member
- Community Development - one member
- Police (non-Guild) - one member
- Finance/Administration - one member

Each department shall also have one alternate who will fill in for a committee member(s) who is unable to attend a meeting, work with an employee, etc. Committee members and alternates shall be elected from among the eligible employees in each department and serve two year terms. Elections shall be held as early as is practical in odd numbered years.

Section 3. Committee Responsibilities and Activities

The Committee represents all covered employees and negotiates and discusses on their behalf with management issues related to wages, hours, and working conditions. The Committee or individual committee members may represent and advise individual employees or groups of

Memorandum of Understanding Creating
City of Des Moines Employee Negotiation and Advisory Committee
Page 2

employees on specific issues related to their particular work group or department. Committee members should serve as an information source to employees in their respective departments.

The Committee may use City meeting space and release time from duty for a maximum of one (1) hour per month for committee meetings, except during negotiations regarding the compensation agreement, when the Committee shall be allowed to meet for reasonable amounts of time as needed. Committee members will also be granted release time for all mutually agreed upon meetings with management during regularly scheduled work hours. Mutually agreed upon meetings scheduled during off-duty hours are not considered compensated time. The City Manager and department heads may restrict a committee member attendance at a meeting if it is determined that the committee member's absence from duty disrupts the City's ability to provide service or jeopardizes the timely completion of a project or activity.

The Committee may use City copy machines, faxes, telephones and other equipment provided reimbursement is made to the City in accordance with Finance Department guidelines.

Section 4. Grievances and Discipline

Committee members may represent an employee or group of employees in the resolution of grievances as outlined in Section 8.B. of the City of Des Moines Personnel Manual. When an employee(s) is attempting to resolve a problem or complaint or have a question answered through the informal communication process, per Section 8.B.1. of the Personnel Manual, he or she may request assistance from a committee member. The supervisor or department head with whom the employee(s) is working to resolve the problem is not obliged to allow the committee member to be present at any meetings held with the employee(s) during this informal stage. Once the formal grievance process begins, the employee(s) may have a committee member present at any meetings held.

Employees may request the assistance of a committee member in situations where the employee may be suspended or terminated as outlined in Section 8 of the City of Des Moines Personnel Manual. Assistance may include time to meet with the committee member to discuss and receive advice on the situation and having the committee member present during meetings with supervision or management.

Section 5. Quarterly Meetings

The Committee and Management will meet at least quarterly to discuss issues of mutual interest and concern.

Memorandum of Understanding Creating
City of Des Moines Employee Negotiation and Advisory Committee
Page 3

Section 6. Modification


This memorandum may be modified with the written consent of both the Committee and the City Manager.

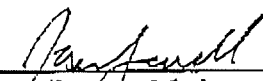
AGREED to this 26 day of March, 1997.


EMPLOYEE NEGOTIATION AND
ADVISORY COMMITTEE

CITY OF DES MOINES

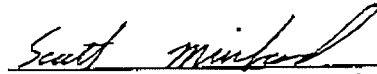

Jim Seitz,
Community Development/Engineering


Robert L. Olander, City Manager

 (For Jimmy Brown)
Jimmy Brown, Marina


Tracy Thomas, Administration


Sherry Gibbs, Police Administration


Scott Muirhead, Public Works

N. EMPLOYEE - EXEMPT

An exempt employee is an employee who holds an administrative, professional or executive position which is defined as exempt under the wage/hour laws of the Fair Labor Standards Act and which is so designated by direction of the City Manager.

The following positions are classified as exempt under the provisions of the Fair Labor Standards Act:

Chief of Police	Community Development Director
City Attorney	Finance Director
City Manager	Assistant City Manager
Public Works Director	Senior Services Manager
Park Manager	Park & Recreation Director
Police Lieutenants	Public Works Superintendent
Harbormaster	A.C.C. Executive Director

O. EMPLOYEE - REGULAR FULL-TIME

A regular full-time employee is an employee who has received an appointment to a budgeted position on a full workweek, year-round basis. Normally such an employee receives a monthly salary.

P. EMPLOYEE - REGULAR PART-TIME

A regular part-time employee is an employee who has been appointed to a year-round budgeted position for less than forty hours per week.

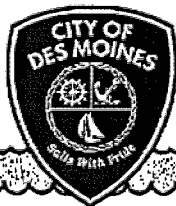
Q. EMPLOYEE - REGULAR PART-TIME FLEXIBLE

A regular part-time flexible employee is an employee who has been appointed to a year-round budgeted position for less than 1664 hours per year. The employee's weekly schedule can vary between 0-40 hours from week to week.

R. EMPLOYEE - TEMPORARY/SEASONAL

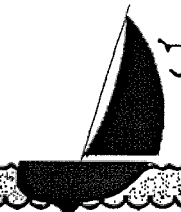
A temporary employee is an employee who has received a temporary appointment to either a budgeted or non-budgeted position. For purposes of this Personnel Manual, a seasonal employee shall be considered a temporary employee. Temporary employees are eligible for overtime, but shall receive no holiday pay, floating holiday, vacation, sick leave, or any other benefits of the City. A temporary employee is eligible for the Washington State Public Employees' Retirement System (PERS) if the employee works over 70 hours per month for 5 consecutive months.

*Police Lieutenants
Reclassified to
Commanders*



City of Des Moines

POLICE DEPARTMENT
21900 11TH AVENUE SOUTH
DES MOINES, WASHINGTON 98198-6319
(206) 870-3301 FAX: (206) 870-7626



FAX TRANSMISSION

DATE: April 30, 2009

TO: P.E.R.C.

FROM: Kevin Tucker

(PHONE #: 206-83964619)

RE: Form E-1 Petition for Investigation of question
concerning Representation.

All original Document will be mailed
within the Hour.

NUMBER OF PAGES, INCLUDING COVER SHEET: 24 pages

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